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Section 5.1 **Notice Requirements and Appeal Process for Title XIX and Title XXI Eligible Persons**

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5.1.1 Introduction

All Title XIX and Title XXI eligible persons must be afforded the opportunity to appeal specified actions that a behavioral health provider may initiate. The circumstances that constitute an action are defined in this section. When a behavioral health provider takes certain actions as defined by this section, the behavioral health recipient must receive adequate and timely notice. Notice allows a behavioral health recipient to exercise their right to appeal a decision.

The intent of this section is to present information for behavioral health providers describing the Title XIX and Title XXI member appeal process and to describe procedures to ensure that behavioral health recipients receive appropriate notification, including:

- The events that require notice to a Title XIX/XXI eligible person ; and
- The timeframes and content associated with providing notice.

5.1.2 References

The following citations can serve as additional resources for this content area:

[42 CFR 431.200 et seq.](#)
[42 CFR 438.210](#)
[42 CFR 438.400 et seq.](#)
[A.R.S. § 36-3413](#)
[A.R.S. Title 41, Chapter 6, Article 10](#)
[2 A.A.C. Chapter 19, Article 1](#)
[9 A.A.C. 34, Article 2](#)
[AHCCCS/ADHS Contract](#)
[ADHS/T/RBHA Contract](#)
[ADHS/DBHS Covered Behavioral Health Services Guide](#)
[Provider Claims Disputes Section](#)
[Securing Services and Prior Authorization Section](#)
[Intake, Assessment and Service Planning Section](#)

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[Member Handbook Section](#)

5.1.3 Scope

To whom does this apply?

This section applies to all Title XIX and Title XXI eligible persons who are:

- Seeking behavioral health services through the ADHS/DBHS behavioral health system; or
- Are enrolled with the ADHS/DBHS behavioral health system.

5.1.4 Definitions

[Action](#)

[Appeal](#)

[Complaint](#)

[Day](#)

[Denial](#)

[Health Care Professional](#)

[Service Authorization Request](#)

[Working Day](#)

5.1.5 Objectives

The objectives of this section are to ensure that Title XIX and Title XXI eligible persons seeking or receiving behavioral health services have access to an appeals process that fairly and efficiently resolves identified issues and that Title XIX/XXI eligible persons are provided required notices that:

- Are timely;
- Explain the action to be taken and the appeal process available to the person or custodial/legal guardian; and
- Are written in a manner that is clear and easily understood by the person.

5.1.6 Did you know...?

- ADHS/DBHS must have systems in place for Title XIX and Title XXI eligible persons that include a complaint process, an appeal process and access to the State's fair hearing process.
- All Title XIX/XXI eligible persons must receive a notice of action and have the right to an appeal when a claim for service relates to the payment for a service that is not Title XIX/XXI covered and the decision is to deny the claim in whole or in part. This notice of action must

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be sent to the person along with the explanation of benefits (EOB) when the claim for payment has been denied (see [Section 5.6, Provider Claims Disputes](#)). This notice requirement is a RBHA responsibility.

5.1.7 Procedures

5.1.7-A: General Requirements

Language and Format Requirements

Entities responsible for sending notice to Title XIX/XXI eligible persons must ensure that:

- Notice and written documents related to the appeals process must be available in each prevalent, non-English language spoken within the RBHA's geographic service area;
- As applicable, behavioral health providers must provide free oral interpretation services to explain information contained in the notice or as part of the appeal process for all non-English languages; and
- Notice and written documents related to the appeals process must be available in alternative formats, such as Braille, large font or enhanced audio and take into consideration the special communication needs of the person.

Computation of time

Behavioral health providers must use the following methodology in computing any period of time described in this section:

- Computation of time in calendar days begins the day after the act, event or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday;
- Computation of time in working days begins the day after the act, event or decision and includes all working days.

Prohibition of punitive action

Behavioral health providers must not take punitive action against a Title XIX/XXI eligible person who decides to exercise their right to appeal. RBHAs must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution to an appeal or who supports a Title XIX/XXI eligible person's appeal.

5.1.7-B: Notice of action

For Title XIX/XXI covered services, notice must be provided following:

- The denial or limited authorization of a requested service, including the type or level of service;
- The reduction, suspension or termination of a previously authorized service; and
- The denial, in whole or in part, of payment for a service (RBHA or ADHS/DBHS responsibility).

Who is responsible for sending the notice?

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Following an action requiring notice to a behavioral health recipient, **[T/RBHA insert language here regarding the entity responsible for providing notice to behavioral health recipients]** must ensure the communication of a notice to the person.

ADHS/DBHS sends notices to Title XIX/XXI eligible persons enrolled with a Tribal RBHA following:

- The denial or limited authorization of a requested service, including the type or level of service;
- The reduction, suspension or termination of a previously authorized service; and
- The failure to act within established timeframes for resolving an appeal and providing notice to affected parties.

How is notice communicated to Title XIX/XXI eligible persons?

The use of [PM Form 5.1.1, Notice of Action](#) is required when providing notice regarding an action concerning a Title XIX/XXI eligible person. [PM Form 5.1.1, Notice of Action](#) must be completed to include the action the behavioral health provider, RBHA or ADHS/DBHS intends to take, the effective date of the action and the reasons for the action. A copy of the notice of action must be filed in the comprehensive clinical record of the person requesting or receiving services.

Delivery of Notices

The notice of action must be delivered to the Title XIX/XXI eligible person and, when applicable their legal guardian (e.g., DES/ACYF casemanager). For Title XIX/XXI eligible persons under the age of 18, the notice of action must be delivered to their legal or custodial parent or a government agency with legal custody of the Title XIX/XXI eligible person.

All notices must be personally delivered or mailed by certified mail to all parties at their last known residence or place of business. In the event that it may be unsafe to contact a person at his or her home address, or the person does not want to receive mail at home, alternate methods identified by the person for communicating notice must be used.

5.1.7-C. Notice of action timeframes

For service authorization requests, the following timeframes are in effect:

- For an authorization decision related to a service requested by or on behalf of a behavioral health recipient, the responsible entity must mail a notice of action within 14 calendar days following the receipt of the behavioral health recipient's request;
- For an authorization request in which the behavioral health provider indicates, or the responsible entity determines, that the 14 calendar day timeframe could seriously jeopardize the behavioral health recipient's life or health or ability to attain, maintain or regain maximum function, the responsible entity must make an expedited authorization decision and mail the notice of action as expeditiously as the behavioral health recipient's health condition requires, but no later than three working days after receipt of the request for service;
- If the behavioral health recipient requests an extension of the timeframe, the responsible entity must extend the timeframe up to an additional 14 days;
- If the responsible entity needs additional information and the extension is in the best interest of the behavioral health recipient, the responsible entity must extend the 14 calendar day or

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the three working day timeframe up to an additional 14 days. If the responsible entity extends the timeframe, the responsible entity must:

- Give the behavioral health recipient written notice of the reason for the decision to extend the timeframe and inform the behavioral health recipient of the right to file a complaint if the behavioral health recipient disagrees with the decision;
- Issue and carry out the determination as expeditiously as the behavioral health recipient's condition requires and no later than the date the extension expires.
- For service authorization decisions not reached within the maximum timeframes outlined above, the authorization must be considered denied on the date that the timeframe expires.

For service terminations, suspensions or reductions, the following timeframes are in effect:

- The responsible entity must send the notice of action at least 10 days before the date of the action with the following exceptions:
 - The responsible entity may mail the notice of action no later than the date of the action if:
 - The responsible entity has factual information confirming the death of a behavioral health recipient;
 - The responsible entity receives a clear written statement signed by the behavioral health recipient that the behavioral health recipient no longer wishes services or the behavioral health recipient gives information to the responsible entity that requires termination or reduction of services and indicates that the behavioral health recipient understands that this will be the result of supplying that information;
 - The behavioral health recipient is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
 - The behavioral health recipient is an inmate of a public institution that does not receive federal financial participation;
 - The behavioral health recipient's whereabouts are unknown and the post office returns mail directed to the behavioral health recipient to the responsible entity indicating no forwarding address;
 - The responsible entity establishes the fact that the behavioral health recipient has been accepted for Medicaid by another state; or
 - A change in the level of medical care is prescribed by the recipient's physician.
- The responsible entity may shorten the period of advance notice to five days before the date of action if the responsible entity has verified facts indicating probable fraud by the behavioral health recipient.

5.1.7-D. Title XIX and Title XXI appeal and state fair hearing process

Who is responsible?

Each RBHA is responsible for processing appeals and may not delegate this function to a behavioral health provider. ADHS/DBHS processes appeals related to actions initiated by a Tribal RBHA or one of their contracted behavioral health providers. Any responsibilities attributed to a RBHA in Subsections 5.1.7-D and 5.1.7-E of this section are inferred to be the responsibility of ADHS/DBHS if the action relates to a Tribal RBHA or one of their subcontracted providers.

The following information is provided to familiarize behavioral health providers with the Title XIX/XXI appeal process.

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Who can file an appeal or request a state fair hearing?

The following persons or representatives may file an appeal or request a state fair hearing regarding an action:

- A Title XIX/XXI eligible person;
- An authorized representative, including a behavioral health provider, acting on behalf of the person, with the person's written consent.

What is the timeframe for filing an appeal?

A Title XIX/XXI eligible person has up to 60 days after the date of the notice of action to file a standard appeal. The appeal may be filed orally or in writing.

How long does the RBHA have to resolve a standard appeal?

The RBHA must resolve standard appeals no later than 30 days from the date of receipt of the appeal, unless an extension is in effect.

Can the standard appeal resolution timeframe be extended?

If a Title XIX/XXI eligible person requests an extension of the 30-day timeframe, the RBHA must extend the timeframe up to an additional 14 days. If the RBHA needs additional information and the extension is in the best interest of the person, the RBHA must extend the 30-day timeframe up to an additional 14 days.

Under what circumstances can an appeal be expedited?

The RBHA must conduct an expedited appeal if:

- The RBHA receives a request for an appeal from a Title XIX/XXI eligible person and the RBHA determines that taking the time for a standard appeal resolution could seriously jeopardize the person's life or health, or ability to attain, maintain, or regain maximum function;
- The RBHA receives a request for an expedited appeal from a Title XIX/XXI eligible person supported with documentation from the behavioral health provider that taking the time for a standard resolution could seriously jeopardize the person's life or health, or ability to attain, maintain or regain maximum function; or
- The RBHA receives a request for an expedited appeal directly from a behavioral health provider, with the Title XIX/XXI eligible person's written consent, and the behavioral health provider indicates that taking the time for a standard resolution could seriously jeopardize the person's life or health, or ability to attain, maintain or regain maximum function.

What if the request for an expedited appeal is denied?

If the RBHA denies a request for expedited resolution of an appeal from a Title XIX/XXI eligible person, the RBHA must resolve the appeal within the standard resolution timeframe and make reasonable efforts to give the person prompt oral notice of the denial. Within two calendar days, the RBHA must follow up with written notice of the denial.

How long does the RBHA have to resolve an expedited appeal?

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The RBHA must resolve expedited appeals within three working days after the day the RBHA receives the appeal.

Can the expedited appeal resolution timeframe be extended?

If a Title XIX/XXI eligible person requests an extension of the three working day timeframe, the RBHA must extend the timeframe up to an additional 14 days. If the RBHA needs additional information and the extension is in the best interest of the person, the RBHA must extend the three working day timeframe up to an additional 14 days.

Requesting a state fair hearing

A Title XIX/XXI eligible person, legal guardian or authorized representative may request a state fair hearing on the RBHA's resolution of an appeal. The request must be in writing and submitted to **[RBHA add contact information here]**. The request must be received by the RBHA no later than 30 days after the date that the person received notice of the appeal resolution.

What assistance must be provided to Title XIX/XXI eligible persons in filing an appeal and/or requesting a state fair hearing?

Reasonable assistance must be provided to Title XIX/XXI eligible persons in completing forms and other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability. Reasonable assistance may be offered by a behavioral health provider or referred to the RBHA by contacting **[RBHA insert specific contact language here]** or, for Title XIX/XXI eligible persons enrolled with a Tribal RBHA, by contacting ADHS/DBHS at (602) 364-4591.

5.1.7-E: Continuation of services during the appeal or state fair hearing process

A Title XIX/XXI eligible person's services can continue during the appeal and state fair hearing process if:

- The person files the appeal timely*;
- The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment or the appeal involves a denial if the provider asserts the denial represents a necessary continuation of a previously authorized service;
- The services were ordered by an authorized provider; and
- The person requests continuation of services.

*Timely filing means filing on or before the later of the following:

- Within 10 days after the date that the RBHA mails the notice of action; or
- The effective date of the action as indicated in the notice of action.

A person must request the continuation of services when the appeal is initially filed **and** at the time of requesting a state fair hearing.

At what point will a person's services no longer be provided during the appeal or state fair hearing process?

The RBHA must continue services until one of the following occurs:

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- The person withdraws the appeal;
- 10 days pass after the RBHA mails the notice of appeal resolution to the person, unless the person, within the 10-day timeframe, has requested in writing a state fair hearing with continuation of benefits until a Director's decision is reached;
- AHCCCS mails a Director's decision adverse to the person; or
- The time period or service limits of a previously authorized service have been met.

What happens if the person loses the appeal?

If the Director's decision upholds the RBHA's action, the RBHA may recover the cost of the services furnished to a Title XIX/XXI eligible person while the appeal is pending if the services were furnished solely because of the requirements of subsection 5.1.7-E.

Special considerations for persons determined to have a serious mental illness

For Title XIX/XXI eligible persons with a serious mental illness, please see [Section 5.5, Notice and Appeal Requirements \(SMI and Non-SMI/Non-Title XIX/XXI\)](#).